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ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

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December 6, 2005

Violet Varona-Lukens
VIOLET VARONA-LUKENS
EXECUTIVE OFFICER

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The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

BOARD POLICY ON CONTRACTOR MERGERS/ACQUISITIONS (ALL DISTRICTS AFFECTED) (3 VOTES)

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve a Board policy establishing guidelines and standard solicitation and contract language for County departments to utilize in circumstances where an existing or prospective contractor is in the process of merging or being acquired by another entity, replacing current standard contract language regarding contract delegation and assignment.
2. Instruct the Director of Internal Services to reflect the new standard language under Contracting Document Models on the County Purchasing and Contracts WebPortal.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On July 19, 2005, your Board directed the Chief Administrative Officer (CAO), County Counsel, and the Chief Information Officer (CIO) to report back with a policy for evaluating companies that are in the process of bidding and negotiating an Information Technology (IT) contract which are being merged with or acquired by another firm. A workgroup consisting of these departments was convened to address this issue. The Internal Services Department provided technical assistance to the workgroup.

Upon further consideration, it was determined that the need for a consistent policy addressing contractor mergers and takeovers should apply not only to IT contracts that are in the solicitation phase, but to all mergers or acquisitions, whether they occur during the solicitation phase or under a current County contract.

Accordingly, the proposed Board policy (Attachment I) provides the following:

- All County contracts must contain standard language which requires disclosure by companies undergoing an acquisition or merger, and provides the County final approval of all contract assignments resulting from such acquisitions or mergers.
- All County solicitation documents must contain standard language requiring disclosure by companies undergoing an acquisition or merger, which allows the County authority to disqualify an otherwise responsive applicant from the process for failure to comply with this provision.
- County departments must conduct a thorough review of such mergers or acquisitions utilizing the minimum set of criteria established in the proposed policy. This review applies to both current contractors, as well as to vendors undergoing the solicitation process. Among the criteria are such considerations as:
 - ✓ Investigation as to whether either vendor/entity is on the County's List of Debarred Contractors.
 - ✓ Identification of the business/legal structure of the surviving entity and the officer(s) authorized to bind the entity contractually.
 - ✓ A thorough assessment of the surviving entity's financial stability.
 - ✓ Consideration of the current DUNN & BRADSTREET rating of the surviving entity, if available.
 - ✓ Examination of the surviving entity's business plan related to the service or product for which the County has contracted or is planning to acquire. Determination if the product/service will continue to be supported and for how long it will be supported.
 - ✓ The surviving entity's written commitment of its willingness to meet the full range of terms and conditions stipulated in County's solicitation document, purchase order, or agreement, as the case may be.

- ✓ Consideration of any other factors that negatively reflect on an entity, which would lead to the conclusion that it would not be in the best interests of the County to continue the contractual relationship.

As set forth in the proposed policy, County departments will have consistent guidelines in conducting an analysis of contractor mergers or acquisitions to help them determine if it is appropriate or within the County's best interests to continue contracting with a firm which has merged with or been acquired by another firm.

The County Counsel and CIO concur with the recommended policy.

Implementation of Strategic Plan Goals

This action supports the following County Strategic Plan Goals:

- **Goal 3: Organizational Effectiveness** – Ensure that service delivery systems are efficient, effective, and goal-oriented.
- **Goal 2: Fiscal Responsibility** – Strengthen the County's fiscal capacity.

FISCAL IMPACT/FINANCING

There is no fiscal impact associated with the recommended action.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The standard contract language established by the proposed policy, replaces existing language found in the Standard Terms and Conditions (Section 8.1, Assignment and Delegation) of the sample contract.

In addition, the standard language to be incorporated into all County solicitation documents will require that vendors notify the County of pending acquisitions/mergers via the *Proposer's Organization Questionnaire/Affidavit* (Attachment II).

Instructions on the use of this policy, its provisions, as well as the evaluation criteria, will be incorporated into the curriculum for future cohorts of the 100-hour County Contract Manager/Analyst certificate course offered through the Los Angeles County Learning Academy.

Honorable Board of Supervisors
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IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval of this policy, as delineated in the recommendation, will enable your Board to implement a uniform countywide approach to evaluating contractor mergers and acquisitions and help promote protection of the County's interests and most effective and appropriate commitment of its resources.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David E. Janssen", with a long horizontal flourish extending to the right.

DAVID E. JANSSEN
Chief Administrative Officer

DEJ:MKZ
AG:os

Attachments (2)

c: All Department Heads